

21-32 and 45-47 without prejudice to or disclaimer of the subject matter contained therein, as outlined in Appendix A, attached herewith.

#### **REMARKS**

Upon entry of the amendment, claims 11-15, 18-20 and 33-44 will be pending in the present application. Claim 13 has been amended. The amendment does not add new matter within the meaning of 35 U.S.C. §132. Accordingly, entry of the amendment is respectfully requested.

Applicants take this opportunity to thank Examiner Sheikh for the telephone interview conducted on October 6, 2005. During the interview, applicants' representative discussed the pending claims and their patentability over the disclosure contained in the cited references by Akiyama et al. and Shell et al. Applicants' representative further pointed out to the Examiner that all rejections based on the Akiyama et al. and Shell et al. references were successfully overcome in the in-person interview of April 6, 2004.

During the in-person interview, Examiners Spear and Sheikh agreed that the cited art does not teach applicants' invention. Accordingly, the Examiners agreed at that time that the present claims appear to be allowable and that the outstanding rejections based on these references were to be withdrawn. However, the

Akiyama et al. and Shell et al. references were once again used in a rejection of the claims.

In the telephone interview of October 6, 2004, Examiner Sheikh agreed to withdraw all rejections based on the Akiyama et al. and Shell et al. references.

The following Response is being filed to be fully responsive to the Official Action dated June 16, 2005.

### **1. Finality of Restriction Requirement**

The Official Action states that the restriction requirement between Group I (claims 1, 2, 4-10, 21-32 and 45-47); Group II (claims 11-15, 18-20 and 33-44); and Group III (claims 16-17) is deemed proper and made final "because of the presence of pharmaceutical excipients, which would provide for different properties, characteristics and effects and thus would be capable of supporting a separate patent within the art."

Although applicants have previously elected Group II and traversed this requirement, applicants have herewith canceled claims 1, 2, 4-10, 16, 17, 21-32 and 45-47 without prejudice to or disclaimer of the subject matter contained therein, solely to obtain an allowance of elected claims 11-15, 18-20 and 33-44.

### **2. Rejection of claim 13 under 35 U.S.C. §112, 2<sup>nd</sup> paragraph**

The Official Action states that claim 13 is rejected under 35

U.S.C. §112, 2<sup>nd</sup> paragraph because it recites "one or more further excipients" and does not contain antecedent basis for the phrase "further excipients". The Official Action further states that the "deletion of the term 'further' in claim 13 would overcome this rejection."

Applicants thank the Examiner for her suggestions regarding the claim language. In this regard, applicants have amended claim 13 by deleting the term "further" as suggested by the Examiner.

Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection of claim 13 and allow this claim to proceed to grant.

### **3. Rejection of Claims 11-15, 18-20 and 33-44 under 35 USC**

#### **§103(a)**

The Official Action states that claims 11-15, 18-20 and 33-42 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Akiyama et al. (US Patent No. 5,948,773) in view of Shell et al. Claim 43 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Akiyama et al. (US Patent No. 5,948,773) in view of Shell et al. and further in view of Matoba et al. (US Patent No. 5,456,920). Claim 44 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Akiyama et al. (US Patent No. 5,948,773) in view of Shell et al. and further in view of Sawhney (US Patent No. 6,632,457).

**Response**

As discussed above in the Remarks section of this Response, applicants respectfully point out to the Examiner that the Akiyama et al. and Shell et al. references were successfully argued over in the in-person interview of April 6, 2004. As such, the Examiner agreed in the telephone interview of October 6, 2005 to withdraw all rejections based on these references.

Applicants further respectfully submit that neither the Matoba et al. reference cited in the rejection of claim 43, nor the Sawhney reference cited in the rejection of claim 44 establish a *prima facie* case of obviousness against the presently pending claims.

Accordingly, applicants respectfully request that the Examiner reconsider and withdraw the rejection of pending claims 11-15 18-20 and 33-44 and allow these claims to proceed to grant.

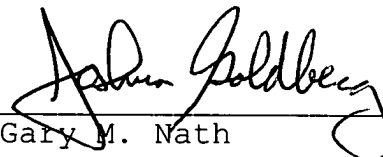
**CONCLUSION**

Based upon the above amendments and remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw the rejections of pending claims 11-15, 18-20 and 33-44. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned attorney if she has any questions or comments.

Respectfully submitted,

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